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OFFICE OF PETITIONS

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| In re Application of | : | |
| Franco Travostino | : | |
| Application No. 09/748,698 | : | ON PETITION |
| Filed: December 22, 2000 | : | |
| Attorney Docket No. 120-201 | : | |

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed December 6, 2007.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the final Office action, mailed March 22, 2006. This Office action set a shortened statutory period for reply of three (3) months. Applicant filed an Amendment on May 4, 2006. However, in an Advisory Action mailed on May 23, 2006, the Examiner informed Applicant that the Amendment did not place the application in condition for allowance. Applicant filed an RCE on June 6, 2006. However, the Office mailed a Notice of Non-Compliant Amendment on August 10, 2006. This Notice did not set any additional period for reply. As such, no proper reply to the final Office action having been received, the application became abandoned on June 23, 2006. The Office mailed a Notice of Abandonment on November 23, 2007.

On petition, applicant argues that he did not receive the August 10, 2006 Notice of Non-Compliant Amendment, and as proof thereof, has included a copy of a docket record showing all items due for a response on November 10, 2006. However, as explained above, the August 10, 2006 Notice did not set a new period for reply.

37 CFR 1.135(b), the regulation relevant to the abandonment of this application, provides that (A) the admission of, or refusal to admit, any amendment after final rejection, or any related proceedings, will not operate to save the application from abandonment; and (B) the admission of, or refusal to admit, any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment. It is the applicant's responsibility to take the necessary action in an application under a final Office action to provide a complete reply under 37 CFR 1.113. 37 CFR 1.116 and 1.135(b) are manifest that proceedings concerning an amendment after final rejection will not operate to avoid abandonment of the application in the absence of a timely and proper appeal.

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m); and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

Application No. 09/748,698

Page 3

Telephone inquiries related to this decision should be directed
to the undersigned at (571)272-3207.

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